

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SF3400
	)	EEOC NO.: 21BA82145
CLAUDE KIRKWOOD,	)	ALS NO.: 09-0308
	)	
Complainant.	)	

**ORDER**

This matter coming before the Commission by a panel of two, Commissioners Sakhawat Hussain and Rozanne Ronen, presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008SF3400, Claude Kirkwood, Complainant, and TDS Services d/b/a McDonald's, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant filed an unperfected charge of Discrimination with the Department on May 21, 2008, perfected on June 9, 2008, in which he alleged that the Respondent harassed him because of his race, African American, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). After an investigation, on May 29, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. The Complainant thereafter filed a timely Request on June 15, 2009.
2. The undisputed evidence in the file shows that the Complainant was hired by the Respondent on May 31, 2007. On two occasions, approximately November 9,

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2007 and March 13, 2008, the Complainant's co-workers accused the Complainant of taking their jackets. These co-workers made their accusations known to the Respondent via its managers. On each occasion, the Respondent thereafter questioned the Complainant about the alleged thefts.

3. The Complainant claimed in his charge that he was questioned about and accused of the alleged thefts because of his race, that the Respondent had harassed him because of his race, and that similarly situated African American employees were treated more favorably under similar circumstances. In his Request, the Complainant indicates he is seeking legal advice, but he offers no additional evidence in support of his Request.
4. In its Response the Department asks the Commission to sustain its dismissal because there is no evidence that the Respondent was motivated by discriminatory intent or animus when it questioned the Complainant about the alleged thefts, and there was no substantial evidence of discrimination or pretext.
5. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainants' charge for lack of substantial evidence for the reasons stated by the Department.
6. The Complainant has not submitted substantial evidence that the Respondent questioned him about the alleged thefts because of his race. Rather, the undisputed evidence in the file shows that the Respondent made the inquiries because other employees had come to it with accusations against the Complainant. There is simply no evidence that race was the motivation for the Respondent's actions.
7. Furthermore, the allegation that the Respondent asked the Complainant on two occasions about alleged thefts does not rise to the level of actionable harassment, in that these two instances do not equate to a ... "pattern of incidents ...so pervasive that [they] constituted a different term and condition of employment based upon a discriminatory factor." See Henry and The Chicago Corporation, \_\_\_ Ill. HRC Rep. \_\_\_, Charge No. 1996CF2615, ALS No. 9653, February 2, 2001.
8. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Complainant's charge is hereby **SUSTAINED**.

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This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent, TDS Services d/b/a McDonald's, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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Entered this 16<sup>th</sup> day of September 2009.

Commissioner Sakhawat Hussain

Commissioner Rozanne Ronen